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STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE05-004

PROPRIETY OF JUDGE
PARTICIPATING AS A JUDICIAL
FELLOW IN THE ASSOCIATION OF
TRIAL LAWYERS OF AMERICA

members who pay membership fees.

Discussion

Issue

May a judge accept an invitation from the Association of Trial Lawyers of America to be recognized as a "Judicial Fellow."

Virtually every jurisdiction which has addressed the question of whether a judge may participate as a member in organizations whose members comprise or frequently represent the same side in litigation has concluded that the judge may not. See, e.g., *Maine Advisory Opinion No. 02-1* (2002); *Maryland Advisory Opinion No. 130* (2000); *West Virginia Advisory Opinion* (2000); *South Carolina Advisory Opinion No. 10-2000* (2000); *Alaska Advisory Opinion 99-4* (1999); *Arkansas Advisory Opinions 99-07; 99-06; 99-04* (1999); *Kentucky Advisory Opinion No. JE-91* (1998); *Arizona Advisory Opinion No. 96-04* (1996); *Louisiana Advisory Opinion* (1991); and *Georgia Advisory Opinion No. 98* (1987). Those opinions rely primarily on those Canons which are directed to the impartiality of the judge and the integrity of the judiciary.

Answer: No.

Facts

The request asks whether a judge may accept a solicitation from the Association of Trial Lawyers of America (the "ATLA") to become a member as a "Judicial Fellow." The solicitation states that there is no fee for participation as a "Judicial Fellow" and that participation will include, without charge, Trial Magazine, other ATLA publications, a CD containing searchable reference papers from the 2004 ATLA annual convention, and attendance at future ATLA conventions.

Canon 2 provides that "a judge shall avoid the appearance of impropriety in all of the judge's activities." In applicable part, Canon 2A states that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The commentary to that Canon notes that a judge must avoid even the appearance of impropriety. The test for appearance of impropriety is "whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity,

The membership of the ATLA consists primarily of attorneys representing plaintiffs. The ATLA describes itself as promoting "justice and fairness for injured persons" and as safeguarding victims' rights. Although the ATLA does not include "Judicial Fellow" as a membership category, it provides a "Judicial Fellow" substantially the same benefits as are provided to regular

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impartiality and competence is impaired."

Canon 4 provides that a judge shall so conduct "extra-judicial activities as to minimize the risk of conflict with judicial obligations." Canon 4A(1) also provides that a judge's extra-judicial activities should not "cast reasonable doubt on the judge's capacity to act impartially as a judge."

It is the view of the Committee that a judge's participation in an organization, like the ATLA, whose members comprise or frequently represent the same side in litigation, creates an appearance of impropriety and a risk of conflict with judicial obligations and casts reasonable doubt on the judge's capacity to act impartially as a judge, all of which undermine public confidence in the integrity and impartiality of the judiciary. This appearance is created even though the ATLA does not include "Judicial Fellow" as an official membership category. It is unlikely that the public would, and indeed this Committee does not, recognize that distinction as a meaningful difference which avoids the reasonable perception of impairment of a participating judge's ability to carry out the judge's judicial responsibilities.

Conclusion

Canon 2 and Canon 2A require that a judge act to avoid the appearance of impropriety and to promote public confidence in the integrity and impartiality of the judiciary. Canon 4 and Canon 4A(1) are similarly directed and relate specifically to a judge's extra-judicial activities. The Committee recognizes that the Canons not only do not intend that judges become isolated from the communities in which they live, they encourage participation in organizations devoted to the improvement of

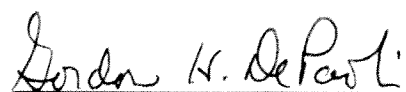
the law. See, e.g., Commentary Canon 4A; Canon 4C(3).

Here, however, the organization is dedicated to one side in particular litigation. It is that dedication or partisanship to a particular philosophy which prevents a judge from participating as a "Judicial Fellow" in ATLA. Such participation in the ATLA undermines public confidence in the judiciary in violation of Canon 2A and casts reasonable doubt on a judge's capacity to act impartially in violation of Canon 4A(1).

References

Nevada Code of Judicial Conduct, Canon 2A; Canon 4; Canon 4A(1); Canon 4C(3); *Maine Advisory Opinion No. 02-1* (2002); *Maryland Advisory Opinion No. 130* (2000); *West Virginia Opinion* (2000); *South Carolina Advisory Opinion No. 10-2000* (2000); *Alaska Advisory Opinion 99-4* (1999); *Arkansas Advisory Opinions 99-07; 99-06; 99-04* (1999); *Kentucky Advisory Opinion No. JE-91* (1998); *Arizona Advisory Opinion No. 96-04* (1996); *Louisiana Advisory Opinion* (1991); *Georgia Advisory Opinion No. 98* (1987).

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